

## **LEASE AGREEMENT**

**THIS LEASE AGREEMENT** ("Lease") dated this 16 Th day of December, 1997 is entered into by the **STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**, acting by and through the **RHODE ISLAND DEPARTMENT OF TRANSPORTATION** having its principal office at Two Capitol Hill, Providence, Rhode Island 02903-1124 (hereinafter referred to as the Landlord) and **OMNIPOINT COMMUNICATIONS ENTERPRISES, INC.**, a Delaware corporation, having its principal place of business at 50 Vision Boulevard, East Providence, Rhode Island 02914 (hereinafter referred to as the "Tenant").

### **BACKGROUND:**

**WHEREAS**, Landlord owns certain real estate located at five (5) sites depicted and described in plans attached hereto and incorporated herein as Exhibit A, and subtitled "Site R-14003E, Kenyon Hill, Richmond Rest Stop, Route I-95, Richmond, Rhode Island; Site R-14005E, Moonshine Swamp, Exit 4, Richmond, Rhode Island; Site R-14014C, Spencer Hill, Near Green Bush Road @ I-95, Warwick, Rhode Island; Site R-14036F, Esmond, Greenville Avenue, Johnston, Rhode Island; Site R-14049G, Georgiaville, Crossing of Farnum Pike & I-295, Smithfield, Rhode Island," prepared by Bay State Design Associates, Inc., 266 Summer Street, Boston, MA 02210 and dated (client revisions) 11/4/97. Said real estate owned and controlled by Landlord and hereinafter referred to as the Demised Premises and depicted upon Exhibit A attached hereto and incorporated herein; and

**WHEREAS**, pursuant to Section 37-7-9 of the General Laws of the State of Rhode Island, as amended, Landlord is desirous of promoting the non-exclusive use of the Demised Premises, interstate freeways and other rights-of-way in a manner most advantageous to the public interest; and

**WHEREAS**, Tenant desires to use the Demised Premises for telecommunication purposes; and

**WHEREAS**, this Lease will apply to the Demised Premises as described above and to an additional seven (7) future sites under the ownership and control of the Landlord, said sites to be determined by the mutual agreement of the Landlord and the Tenant.

**NOW, THEREFORE**, the parties agree as follows:

1. **LEASE OF DEMISED PREMISES:** Landlord hereby leases to Tenant the non-exclusive use of a total of twelve (12) sites as described above, each of which will comprise a portion of the Demised Premises, for the construction, erection, operation, maintenance, repair, replacement, protection and security (hereinafter referred to as the “Rights”) of a “Monopole” or “Lattice Tower” antenna(s), cables, conduits, equipment shelter and other associated equipment (such Monopole, Lattice Tower, antenna(s), cables, conduits, equipment shelter and other associated equipment being collectively hereinafter referred to as the “Radio Link”) as further described and depicted on Exhibit A, attached hereto and incorporated herein. Tenant shall have the right during the term of this Lease to cross over land owned by Landlord adjacent to the Demised Premises and to enter and re-enter the Demised Premises during normal business hours with Tenant’s servants, independent contractors, agents, vehicles, machinery and equipment for the general purpose of exercising the Rights. In the event that Tenant shall require to cross over land owned by Landlord adjacent to the Demised Premises and enter and re-enter the Demised Premises outside normal business hours, it shall request, in advance, the permission of Landlord, which permission will not be unreasonably withheld. In the event of an emergency which necessitates that Tenant immediately to so cross over and enter/re-enter the Demised Premises outside of normal business hours, Tenant shall have said right, provided that it notifies Landlord within twenty-four (24) hours thereof and in writing within forty-eight (48) hours thereof, said notice to describe the nature of the emergency. The Landlord’s access to and use of the Demised Premises and land owned by Landlord adjacent to the Demised Premises will not be restricted or mitigated in any manner as a result of said emergency. Tenant’s crossing over land owned by Landlord adjacent to the Demised Premises and occupying the Demised Premises must be conducted by Tenant in a manner which will safeguard the integrity of said land and the Demised Premises. Tenant will be liable to Landlord for any damage caused by, or costs associated with, Tenant or its contractors, agents and assigns in crossing over and entering/re-entering said land and the Demised Premises, normal wear and tear excepted.
2. **USE:** Tenant will use the Demised Premises for exercise of the Rights with respect to the Radio Link and for no other purpose whatsoever. Tenant is entitled to install on the Demised Premises, as part of the Radio Link, up to fourteen (14) antenna(s), plus install from time to time, other

accessories appropriate to the successful and secure operation of the Radio Link, provided, however, that said antenna(s) will be in a number and a location which will not interfere with the use of said Demised Premises by Landlord or its present assigns, as expressed in Paragraph 9. Tenant will have the right, at its sole cost and expense, to fence in the Demised Premises provided that the location, appearance and materials of said fencing will be preapproved in writing by Landlord, such approval not to be unreasonably conditioned, withheld, or delayed.

3. **REMOVAL:** (a) All portions of the Radio Link brought onto the Demised Premises by Tenant will remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during the term hereof, but no later than Thirty (30) days after receipt of written notice that the Lease has terminated. Tenant agrees that upon termination or expiration of this Lease, Tenant will restore the Demised Premises to its condition as of the Commencement Date (as defined in Paragraphs 4 and 5 hereinbelow), reasonable wear and tear and damage from elements, casualty, eminent domain, excepted; (b) Landlord will allow Tenant to make reasonable, appropriate alterations to the Demised Premises in order to accomplish Tenant's exercise of the Rights. Said alterations must be in accordance with plans and specifications (hereinafter referred to as the "Plans") to be submitted by Tenant for review and approval of Landlord, said approval not to be unreasonably withheld, conditioned or delayed and which approval will be deemed to have been given if Landlord fails to approve or deny approval of the Plan within Fifteen (15) business days following Tenant's submission thereof. After acceptance, Plans will be considered incorporated in this Lease as Exhibit B. Any subsequent Tenant's changes or modifications to the Plans will require the same approval process. Landlord agrees that all portions of the Radio Link (including the Monopole, Lattice Tower, antenna(s) and equipment shelter) will remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during the term hereof, but no later than Thirty (30) days after receipt of written notice that the Lease has terminated. Landlord further agrees that all Plans remain the personal property of Tenant and shall be treated as confidential trade secret material of Tenant. Landlord will not knowingly permit or suffer any person to copy or utilize the Plans for any purpose other than as provided in this Lease and will return the Plans to Tenant

promptly upon request; (c) Landlord expressly agrees that all rights granted to Tenant under this Lease are irrevocable until termination as provided in this Lease.

4. **TERM AND TERMINATION:** Subject to Paragraph 5 below, this Lease will be for a term of five (5) years (hereinafter referred to as the "Initial Term") commencing upon either (a) when a building permit is issued to Tenant by the municipality having jurisdiction and the Rhode Island State Building Inspector's Office, if required, empowering Tenant's erection of the Radio Link; or (b) when Tenant begins construction of the Radio Link; or (c) two (2) years from the execution of this Lease, whichever shall first occur (hereinafter referred to as the "Commencement Date"). The Initial Term will terminate on the day before the fifth (5th) anniversary of the Commencement Date. Tenant agrees that upon the execution of this Lease it will proceed in good faith and with reasonable diligence to obtain said building permit and construction of the Radio Link. As used herein, term refers to the Initial Term and any renewal term effectuated as herein provided. If, at any time during this Lease, Tenant determines the Demised Premises has become unsuitable for Tenant's Radio Link due to (a) governmental regulations or Tenant's inability to obtain or maintain any permit or lease therefor or undue risks to Tenant of governmental action or intervention or third party liability; (b) engineering or other technical standards or causes or interference by or to Tenant's operation that cannot be resolved; (c) subsequent changes in system or network design; (d) destruction or damage to the Demised Premises or the taking thereof (by partial condemnation or otherwise) sufficient, in Tenant's reasonable judgment, to adversely affect Tenant's use of the Radio Link, then, in any such case, Tenant may terminate this Lease early by notice to Landlord. Termination shall be effective thirty (30) days after said notice is received by Landlord except that in the case of a casualty or taking, rent shall be payable only to the date of the casualty or the transfer of property to the taker, as the case may be. Landlord shall have the right to terminate the Lease upon not less than one hundred eighty (180) days written notice to Tenant in the event that Landlord requires the Demised Premises for a compelling state interest that cannot be coordinated with Tenant's use thereof. In the event that Landlord decides to exercise its termination rights hereunder it will give notice to Tenant as herein provided under Paragraph 17. Unless otherwise agreed to by Landlord and Tenant, upon termination, Tenant shall proceed expeditiously and continuously to remove the Radio

Link from the Demised Premises, provided that Tenant shall restore the Demised Premises to its original condition. In the event that Tenant fails to remove the Radio Link within Thirty (30) days of receipt of written notice as provided hereinabove, Landlord shall have the right, at its option, to (i) treat the Radio Link as abandoned property and (ii) sell or otherwise dispose of same as Landlord sees fit applying any proceeds thereof to reduce any amounts owed to Landlord hereunder, and (iii) permit others to use the Radio Link, without liability for any damage thereto as to Tenant or (iv) remove the Radio Link to a storage facility and upon reimbursement of any charges incurred with such storage, release said Radio Link to Tenant. Tenant hereby agrees and covenants that Tenant shall not hold Landlord liable for any damage, cost, losses, or other claims to the Radio Link and/or Tenant's business resulting from Landlord's termination of this Lease and/or removal or storage of the Radio Link as described in this Paragraph 4. In the event that any hazardous material is evidenced from testing Tenant has the right to relocate to a suitable location on land owned by Landlord adjacent to the Demised Premises.

5. **RENT:** Commencing on the Commencement Date and continuing through the Initial Term hereof, Tenant will pay Landlord an annual rent of Fifteen Thousand Dollars (\$15,000.00) per site for the initial twelve (12) sites cited in Paragraph 1 hereof, representing a total annual rental of One Hundred Eighty Thousand Dollars (\$180,000.00), and Twelve Thousand Dollars (\$12,000.00) per site for any sites that may be agreed upon by the Landlord and the Tenant thereafter. All rent shall be due and payable in advance on the first business day of the month due and shall be pro-rated for any partial months. Rent shall be paid by Tenant's business check mailed or delivered to Landlord at the address of Landlord set forth in Paragraph 17 herein. Checks shall be made payable to "General Treasurer, State of Rhode Island"; in no instance shall cash be tendered as payment.
6. **OPTION TO BARTER:** Landlord reserves the option to receive equipment provided by Tenant, in lieu of rent payments. In such event the dollar value of the equipment for purposes of comparison to the rent will be the actual cost of the equipment to Tenant.
7. **RENEWAL OPTIONS:** Tenant will have the option of renewing this Lease for three (3) successive terms (hereinafter referred to as "Renewal Term") consisting of two (2) five (5) year terms and one three (3) year term, upon the same terms and conditions which were in effect at the end of the Initial

Term, except as to the payment of rent. During said Renewal Terms rent shall be in the following amounts and due and payable as hereinabove described:

<u>Renewal</u> <u>Terms</u>	<u>Annual Rent Payment</u>
1st	One Hundred Eighty Thousand Dollars (\$180,000.00), plus Twelve Thousand Dollars (\$12,000.00) per site for each site in addition to the initial twelve (12) sites, cited in Paragraph 1 hereof, or an amount equaling the annual rent during the Initial Term multiplied by the percentage change, during the Initial Term, in the Consumers Price Index for all Urban Consumers, all items, for size Class C Northeast City (base year 1967=100) published by the United States Department of Labor, Bureau of Labor Statistics (hereinafter the "CPI") whichever is greater. For example, assuming the CPI equaled 322 upon the commencement of the Initial Term and 400 at the end thereof, the index point change would equal 78. The percentage of change would equal 24.2% (78 divided by 322). Multiplying the Initial Term annual rent of One Hundred Eighty Thousand Dollars (\$180,000.00), and assuming no new sites in addition to the initial twelve (12), by 24.2% would yield the new monthly rent of Two Hundred Twenty-three Thousand Five Hundred Sixty Dollars (\$223,560.00) for the first Renewal Term (for comparison purposes).
2nd	One Hundred Eighty Thousand Dollars (\$180,000.00), plus Twelve Thousand Dollars (\$12,000.00) per site for each site in addition to the original twelve (12) sites cited in Paragraph 1 hereof, or an amount equaling the rent during the first Renewal Term multiplied by the CPI as hereinabove described whichever is greater.
3rd	One Hundred Eighty Thousand Dollars (\$180,000.00), plus Twelve Thousand Dollars (\$12,000.00) per site for each site in addition to the initial twelve (12) sites cited in Paragraph 1 hereof, or an amount equaling the rent during the second Renewal Term multiplied by the CPI as hereinabove described whichever is greater.

This Lease will automatically renew for each Renewal Term unless Tenant or Landlord gives notice one to the other of its intention not to permit this Lease to renew at least sixty (60) days prior to the end of the then current Initial or Renewal Term. Upon such notice, the option (s) then remaining will be rendered null and void and this Lease will immediately terminate at the end of the then current period.

8. **CONTINGENCIES:** (a) Landlord agrees that Tenant's ability to use the Demised Premises is contingent upon its suitability for Tenant's intended use from both an economic and technical engineering basis and Tenant's ability to obtain any and all governmental licenses, permits, approvals or other relief required or deemed necessary or appropriate by Tenant for its use of the Demised Premises (hereinafter called "Governmental Approvals") by that date which is eighteen (18) months

from the date of this Lease, provided that Tenant will have the right, without obligation, to appeal any denial and the contingency date for obtaining Governmental Approvals will be extended until such time as a final decision is rendered and is not the subject of any further appeal made or defended by Tenant. Landlord specifically authorizes Tenant to prepare, execute and file all necessary or appropriate applications to obtain Governmental Approvals for its use under this Lease. (b) Tenant may obtain, within ninety (90) days of the date of this Lease, at Tenant's own expense, satisfactory soil boring, percolation or other tests or reports of the Demised Premises as are deemed appropriate by Tenant to determine the physical characteristics and conditions thereof. (c) Tenant covenants and agrees to notify Landlord, as described in Paragraph 17, herein, at least twenty-four (24) hours in advance of entering on the Demised Premises and/or land adjacent to the Demised Premises owned and controlled by Landlord to conduct the soil borings. Copies of the findings of any such tests or reports must be provided to Landlord and indicate, to Tenant's absolute satisfaction, that Demised Premises are suitable for Tenant's use. (d) Tenant covenants and agrees with Landlord that there will be no blasting within the Demised Premises and/or said land without the prior written approval of the Landlord and Tenant will defend, indemnify and hold Landlord harmless for any damage resulting from its blasting and will maintain insurance to that end naming the Landlord as an additional insured. If any of the contingencies in this Paragraph 8 are not satisfied (including within any applicable time period as may be provided) or expressly waived by Tenant in writing, Tenant will have the right, without obligation, to terminate this Lease immediately and render it null and void from and after the date of termination.

9. **NON-INTERFERENCE:** Tenant has evaluated the possibility of interference from or to existing wireless communication uses on land adjacent to the Demised Premises owned and controlled by the Landlord, the Demised Premises and Tenant's Radio Link. Tenant has determined that no such interference should occur if these other uses and Tenant's Radio Link are properly and lawfully installed and operated. If any interference is caused to Radio Link by Landlord, or any party now or in the future holding an interest in property from or under Landlord, due to improper or unlawful operation, or any subsequent change or addition of equipment or improvements by Landlord or any such holder on said property, Landlord agrees to eliminate same in a prompt and timely manner to

the best of Landlord's ability. The cost of such elimination, if any, to the Landlord shall be borne by the Tenant, or the Tenant shall have the option to relocate to a more suitable location on the land owned and controlled by the Landlord. Tenant hereby accepts and acknowledges that Landlord uses said land for the transmission and receipt of wireless communications critical and necessary to the public welfare and safety and, accordingly, Tenant hereby agrees that if wireless communications from or to its Radio Link interfere with the aforesaid transmissions by Landlord, Tenant shall proceed expeditiously and continuously at Tenant's expense to remove said interference upon request from Landlord to so do. If such interference cannot be eliminated, the Landlord shall have the option to terminate this Agreement, after said interference is removed, according to the provisions of Paragraph 4, herein.

10. **INSURANCE/LIABILITY:** (a) Tenant shall carry with respect to all Tenant's operations under this Lease including Tenant's exercise of the Rights, at Tenant's sole cost and expense, the following insurance; (i) All Risk property insurance for the cost of replacement of the property of Tenant and Landlord, and (ii) comprehensive general liability insurance with a commercial general liability endorsement having a minimum limit of liability of Two Million Dollars (\$2,000,000) for bodily injury, death, personal injury, property damage arising out of one occurrence and Two Million Dollars (\$2,000,000) for damage to property from any one occurrence and excess/umbrella coverage of Two Million Dollars (\$2,000,000); (b) Tenant will also provide and keep in effect a Workmen's Compensation Insurance policy complying with the requirements of the statutes of the jurisdiction in which the Demised Premises is located covering all employees of Tenant. Said policy will be in limits of not less than those required by law for each accident or illness and naming Landlord as an additional insured. The providing of said insurance coverages will not be deemed a limitation on the liability of Tenant as provided in this Lease, but will be additional security therefor. Tenant will name Landlord as an additional insured under its liability policies and require its insurance company to endeavor to give at least thirty (30) days prior written notice of termination or cancellation of the policy to Landlord. Such endorsement will be delivered to Landlord within thirty (30) days from the execution of this Lease and before the expiration of any term thereof from a reputable, licensed insurance company.



11. **INDEMNIFICATION:** Tenant will be responsible for and will indemnify, save harmless and defend Landlord against and from any and all claims and suits for, and any and all liability, loss or expenses (including reasonable attorneys fees) arising from or incidental to or in connection with bodily injuries, including death, personal injuries or damage to or loss of property , which said damage, loss or injury or death shall arise in any manner, directly or indirectly, out of, or incidental to, or in connection with this Lease, or the Demised Premises, or the use or occupation thereof, including any appurtenant sidewalk or driveways.

Notwithstanding the foregoing, the above indemnification shall not apply to harm caused by the willful tortious acts or sole negligence of Landlord or its agents, servants, employees or any other person operating by, for or through the Landlord. The Tenant specifically agrees to relieve the Landlord of any and all liability for damage to contents of land owned and controlled by Landlord and the Demised Premises, including without limitation thereto the Radio Link, owned by or in the custody of the Tenant, or improvements therein owned by the Tenant, whether damaged by fire and extended coverage perils or other casualty. This indemnity does not apply to any claims arising from sole negligence or willful tortious acts of the indemnified party.

12. **WARRANTIES:** Landlord represents and warrants, (i) that Landlord is duly organized/ formed, validly existing and in good standing and has all rights, power and authority to make this Lease and bind itself thereto through the party set forth as signatory of Landlord set forth below; (ii) that it has not dealt with, nor is any brokerage commission due to, any broker in connection with this Lease; (iii) that Landlord solely owns the property as a legal first in fee simple unencumbered by any prior lease or mortgage and, (iv) grants Tenant, unless Tenant defaults hereunder, non-exclusive, actual and quiet and peaceful use, enjoyment and possession of the Demised Premises during the term herein contemplated and, (v) the Demised Premises and its uses and operations, the making of this Lease, and Landlord's performance of this Lease, to the best of Landlord's knowledge complies, and will comply, with all laws, and not violate the provision of any agreement or encumbrance of any kind under which Landlord is a party or is bound or which restricts in any way the disposition or use of the Demised Premises. Tenant has inspected and accepts the Demised Premises in their present condition and agrees that no representation or warranties with regard to condition, fitness

for use or zoning of the Demised Premises have been made by Landlord except as specifically expressed herein; and further agrees, at Tenant's sole cost and expense, to put and keep the Demised Premises in constant good order, repair and safe condition, both inside and outside, structural or otherwise, including but not limited to yards or other open areas, fences, railings, sidewalks, driveways and curbing thereon.

13. **ACCESS TO DEMISED PREMISES:** Landlord shall be permitted access to the Demised Premises provided that Tenant's equipment technology and proprietary interests remain secure and the Radio Link's operation is not adversely affected. A duplicate of any key giving entrance through the fencing around the Demised Premises will be provided to Landlord by Tenant.
14. **MAINTENANCE AND REPAIRS, UTILITIES:** (a) Tenant shall perform all repairs necessary to keep its Radio Link located on or about the Demised Premises in good condition, reasonable wear and tear and damage from elements excepted, (b) Tenant, at its sole cost and expense, shall arrange for, install and obtain necessary heat, water, electricity, sewage, storm drainage, and other utility services required for its use of the Demised Premises within easement area granted by Landlord. In the event it is impossible or impracticable to secure any of such services other than through facilities owned by Landlord, Tenant shall install at its expense necessary connections, supply lines, and (where permitted by law) meters to measure Tenant's consumption of such services and shall pay to Landlord upon demand, as additional rent, any costs incurred by Landlord for any such installation and, further shall pay for such services, upon demand by Landlord, as additional rent. Landlord shall not be liable for any temporary or permanent suspension of any such services that are either beyond the control of Landlord or necessary for public safety or public welfare.
15. **DEFAULT AND RIGHT TO CURE:** The following shall be deemed a default by Tenant and a breach of this Lease, (a) non-payment of rent or other Tenant monetary obligations due as specified hereunder, if remaining unpaid more than thirty (30) days after receipt of notice from Landlord of such failure to pay; or (b) Tenant's failure to perform any other agreement, representation or warranty required of Tenant to be performed under this Lease within forty-five (45) days after receipt of such notice from Landlord reasonably specifying the failure. No such

failure, however, shall be deemed to exist if Tenant in fact shall honestly commence to rectify the same within such forty-five (45) day period and provided such efforts shall be prosecuted to completion with reasonable diligence in a manner and schedule acceptable to Landlord. Delay in rectifying the same shall be excused if due to causes beyond the reasonable control of Tenant, or (c) if the Demised Premises should at any time be used by Tenant for purposes other than as herein permitted, if such shall not be cured within five days of notice to Tenant by Landlord, unless such use imperils public safety and then no notice shall be required; or (d) if Tenant shall file for bankruptcy or be declared bankrupt and during said bankruptcy shall be in monetary default, or (e) if Tenant shall make a general assignment for the benefit of creditors, then, in any such case, Landlord may, by written notice to Tenant, immediately declare this Lease terminated, and all buildings, structures, improvements, materials, and personal property owned, erected, or placed upon the Demised Premises by Tenant shall thereupon be removed by Tenant, at the sole cost and expense of Tenant; and Tenant also shall pay to Landlord upon demand all fees and expenses, including reasonable attorney fees, incurred in connection with and in obtaining possession of the Demised Premises as aforesaid. Upon termination of this Lease by Landlord under the provision of this Paragraph 15, the whole rent for the remainder of any term of this Lease, or for the remainder of any exercised renewal thereof, shall be due and payable at the times and in the manner provided for in Paragraph 5 of the Lease and Landlord may proceed according to law to collect the same and re-let the Demised Premises and receive and retain the rent therefor, and Tenant shall pay to Landlord a lump sum for any deficiency between the rents hereby reserved, including additional rents, and the rents collected for each month of the period which would otherwise have constituted the balance of the term of this Lease or of any continued term thereof.

16. **NON-EXCLUSIVE USE ONLY:** Tenant hereby acknowledges that its interest in the Demised Premises is non-exclusive. Tenant shall not unreasonably deny use and enjoyment of the Demised Premises to other telecommunications providers and shall as required by the Telecommunications Act of 1996 and subject to written approval of Landlord, enter into sublease agreements in regard to the Demised Premises. Landlord shall be entitled to receive Fifty Percent (50%) of any rental installment payments as they are received by Tenant. All such subleases shall not be valid until first

approved by the State Properties Committee. (a) In reference to such subleases Tenant shall require the sublessee, (i) to indemnify Tenant and Landlord and hold Tenant and Landlord harmless from and against any liability and related costs for personal injury or damage to property caused by negligent acts or omissions of such additional user; and (ii) not to interfere with Tenant's operation of its Radio Link as provided herein; and (b) with respect to the first three additional users who commence use of the Radio Link during the term of this Lease, that such additional users will reimburse Tenant and each other for a portion of the expenses of the Monopole/or Lattice Tower, calculated as follows, (c) the first additional user shall be required to reimburse first Tenant for one-half of the costs of the Monopole/or Lattice Tower; (d) second additional user shall be required to reimburse each Tenant and the first additional user for an amount equal to one-third of the cost of the Monopole/or Lattice Tower; and (e) the third additional user shall be required to reimburse the other two additional users for one-fourth of the costs of the Monopole/or Lattice Tower. Additional use of the Radio Link shall only be permitted so long as it does not cause frequency interference with Landlord or with Tenant's operation of the Radio Link or threaten the structural integrity of the monopole. Tenant, will however, as a condition of this lease endeavor to cooperate with additional users of the Monopole/or Lattice Tower to eliminate the possibility of frequency interference. Tenant shall operate the Radio Link in accordance with all Federal, State and local laws, including without limitation thereto, environmental laws, to minimize interference with additional users use of the Monopole/or Lattice Tower.

17. **NOTICES:** Unless otherwise provided herein, any notice or demand required or permitted to be given under this Lease will be given in writing by hand delivery, first-class certified or registered mail, return receipt requested, or by recognized overnight mail, in a sealed envelope, postage prepaid, to be effective when properly sent and received, refused or returned marked undeliverable. Notice will be addressed to the parties at the following addresses, for Landlord: Assistant Director for Property and Right-of-Way, Rhode Island Department of Transportation, Two Capitol Hill, Providence, Rhode Island 02903-1124; for Tenant: to the address for Tenant set forth on the first page of this Lease, Omnipoint Communications Enterprises, Inc., 50 Vision Boulevard, East Providence, Rhode Island 02908, Attn: Technical Director. Copies to: Evelyn Goldfine, Chief

Administrative Officer, Omnipoint Corporation, Three Bethesda Metro Center, Suite 400, Bethesda, Maryland 02814. Either party hereto may change the place for the giving of notice by written notice one to the other as provided herein.

18. **SEVERABILITY:** If any term or condition of this Lease is held to be unenforceable or invalid because of the final judgment of any court of competent jurisdiction, the remaining terms and conditions will remain binding upon the parties as though said unenforceable or invalid provision were not contained herein.
19. **SUBORDINATION:** This Lease is subject and subordinate to any mortgages, leases, licenses, easements, and agreements which may now affect the real property of which the Demised Premises form a part and to all renewals, modifications, consolidations, replacements and extensions thereof.
20. **STRUCTURAL MARKING AND LIGHTING:** (a) Tenant acknowledges that it is aware of its obligations under Section 303 of the Communications Act of 1934 (47 U.S.C. 303) as amended from time to time, to maintain the painting and illumination of the Monopole/or Lattice Tower as prescribed by the Federal Communication Commission (FCC), if applicable. Tenant further acknowledges that it is aware that it is subject to forfeitures assessed by the Federal Communication Commission (FCC) for violations of such rules and requirements; (b) If applicable, Landlord agrees (i) to allow Tenant to bridge into Landlord's automatic alarm system (hereinafter referred to as the "Alarm") which monitors the lighting of the Monopole/or Lattice Tower so as to permit a parallel alarm system and Tenant will be permitted, upon approval of Landlord, such approval not to be unreasonably conditioned, withheld, or delayed, continuous access to make repairs and inspections to its line, or (ii) if Landlord currently does not have an automatic alarm, to cause to be installed such an alarm which can accommodate a bridge-in by Tenant, at Tenant's cost and expense, to allow Tenant, at Tenant's own cost and expense to make repairs and inspections to its bridge. Tenant will, at its own expense, be responsible for the maintenance and repair of the Alarm in good operating condition. Tenant will, at its own expense, be responsible for the maintenance and repair of its bridge.

21. **AMENDMENT WAIVER:** No amendment, modification, change in terms or revising of this Lease will be valid unless made in writing and signed by the authorized agent of Tenant, an authorized agent of Landlord and the Rhode Island State Properties Committee.
22. **RECORDING OF THE AGREEMENT:** Upon the execution of this Lease, Tenant will proceed expeditiously and at Tenant's expense to record a notice of this Lease, substantially in the form of Exhibit C attached hereto, in the Office of the Recorder of Deeds, or appropriate Land Evidence Office, of the City/Town of \_\_\_\_\_, Rhode Island.
23. **BIND AND BENEFIT:** This Lease and its terms and conditions will run with the Property and inure to the benefit of and be binding upon Landlord and Tenant and each of their respective heirs, executors, administrators, successors and permitted assigns. Landlord agrees that Tenant may assign or sublet this Lease in whole or part to any person or business entity which is licensed by the FCC to operate wireless communications and which is a parent of Tenant, controls or is merged or consolidated with Tenant, or, subject to approval of Landlord, under common control with Tenant, or purchases a majority or controlling interest in the ownership or assets of Tenant in New England. Upon receipt of notification by Landlord from Tenant of any such action, Tenant shall be relieved of all future performance, liabilities and obligations under this Lease, provided that the transferee agrees to assume all of Tenant's future obligations hereunder. Otherwise Tenant will not assign or transfer this Lease in whole or part, or sublet the Demised Premises or any part thereof, without the prior written consent of Landlord, and Tenant will not mortgage or otherwise encumber or permit to be encumbered the term or any continued term hereof, or any part thereof, or any structures now or hereafter placed on the Demised Premises without the prior written consent of Landlord. Said consents will not be unreasonably withheld.
24. **RIGHT TO INSPECT:** Tenant will permit Landlord or its authorized agent to enter the Demised Premises for the purpose of inspecting the same at any reasonable time or times during the term or any renewal term of this Lease but will not permit access to the PCS equipment. In the event of an emergency that necessitates immediate action, Landlord has the right to access the entire site and equipment.

25. **ADVERTISING:** No advertising will be placed upon the Demised Premises except to advertise Tenant's own business. All such advertising must have the prior written consent of Landlord.
26. **ORDINANCES:** With respect to Tenant's use of the Demised Premises, Tenant, at its sole cost and expense, will comply with and obey all laws, ordinances, rules, regulations, and requirements of all Federal, State, municipal, town, city or other governmental authorities and the various departments thereof now existing or hereafter created.
27. **HAZARDOUS USE:** Tenant covenants and agrees with Landlord that neither Tenant nor any person claiming under Tenant, nor the employees, agents, tenants, contractors, licensees, invites, or visitors of the Tenant will use, store, generate, or permit to be stored or generated within the Demised Premises including, without implied limitation, any explosive or flammable material, oil, hazardous material, hazardous waste, or hazardous substance, as those terms are defined by any applicable law, rule or regulation, including, without limitation, the Rhode Island Hazardous Waste Management Corporation Act, R.I.G.L. 23-19-1 et seq., the Rhode Island Hazardous Substances Act, R.I.G.L. 23-24-1 et seq., the Rhode Island Rules and Regulations for Hazardous Waste Generation, Transportation, Treatment, Storage and Disposal, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 et seq., and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq.
28. **ENTIRE AGREEMENT:** This Lease and exhibits attached hereto, all being a part thereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements.
29. **GOVERNING LAW:** This Lease will be governed by the laws of the State of Rhode Island.
30. **INTERPRETATION:** Unless otherwise specified, the following rules of construction and interpretation apply to this Lease, (a) captions are for convenient reference only and in no way define or limit the construction of the terms and conditions hereof; (b) use of the term "including" will be interpreted to mean "including but not limited to," use of the terms "termination" or "expiration" are interchangeable; (c) except as otherwise expressly stated, whenever a party's approval or consent is required under this Lease, such consent will not be unreasonably withheld or delayed; (d)

reference to a default shall take into consideration any applicable notice, grace and cure periods; and (e) exhibits are an integral part of this Lease.

31. **ESTOPPEL:** (a) Either party will, at any time upon thirty (30) days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing, (i) certifying that this Lease is unmodified and in full force and effect, (or, if modified, stating the nature of such modification and certifying this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to such party's knowledge, any uncured defaults or disputes on the part of the other party hereunder, or specifying such defaults or disputes if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Demised Premises, Monopole, Lattice Tower or Radio Link, provided that Landlord will not be herein liable by Tenant or any third party for any statement forwarded to be in error to any prospective purchaser of the Radio Link; (b) Failure to timely deliver such a statement will be conclusive as a self-operative statement from the party from whom requested that, (i) Lease is in full force and effect (without modification except as may be properly represented by the requesting party), (ii) there are no uncured defaults or disputes in the requesting party's performance, and (iii) no more than one month's rent has been paid in advance.
32. **RESPONSIBILITY OF TENANT TO ITS EMPLOYEES:** Tenant, in the performance of any and all work by Tenant under the terms of this Lease, upon or adjacent to the Demised Premises, will furnish all labor and supervisory forces of every kind and Tenant will employ, pay from Tenant's own funds and have the right to discharge all persons engaged in the performance of such work and all such persons will be and remain the sole employees of Tenant and subject to Tenant's exclusive supervision, direction and control. Tenant will indemnify, defend and hold harmless Landlord from any and all claim(s), suit(s), liability, or loss or expense(s) (including reasonable attorneys fees and court fees), arising from or incidental to or in connection with any work, act, or omission to, act done in, on or about the Demised Premises or any part thereof, by or on behalf or any person claiming under Tenant or employees, agents, tenants, contractors, licensees, invitees or visitors of



Tenant or any such person. The foregoing indemnification will not include injury or damage directly caused by the sole negligence of Landlord or its employees.

33. **LIENS AND CHARGES:** Tenant, within sixty (60) days after completion of any construction, alteration, repair or improvement in or upon the Demised Premises, including, without limitation thereto the Radio Link, will furnish to Landlord a certified statement that all charges for labor and materials furnished have been paid, together with releases of liens. The creation or imposition of any lien or charge upon the Demised Premises and/or the Property through acts or omissions of Tenant, its agents, contractors or subcontractors will be deemed a default under the provisions of this Lease. In the event any such lien or charge shall not be paid or bonded by Tenant within fifteen (15) days after the lien charge accrues, Landlord will have the right to pay such lien or charge if it so wishes and Tenant will repay the cost to Landlord as additional rent hereunder, with interest at twelve percent (12%) per annum from the date of payment by Landlord, promptly upon rendition of bill therefor. Nothing in this paragraph or in any other paragraph or the Lease will be construed as authority to Tenant to create any lien on Landlord's interest in the Demised Premises and/or the Property.
34. **INABILITY TO PERFORM:** This Lease and obligation of Tenant to pay rent or additional rents hereunder and to keep and perform all other covenants and agreements hereunder on the part of Tenant to be kept or performed will not be affected, impaired, or excused because Landlord is unable to fulfill any of its obligations under this Lease, if Landlord is prevented or delayed from so doing by reason of labor troubles or any outside cause beyond the control of Landlord including, but not limited to, governmental action or preemptive Act of God, war, or civil commotion.
35. **NONDISCRIMINATION:** In connection with the performance of all work under this Lease Tenant agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. Tenant further agrees to covenant, in a form to be specified by Landlord, that it will comply with the nondiscrimination requirements of the Code of Federal Regulations, Title 49, Part 21, Appendix C(b)(3), effectuation of Title VI of the Civil Rights Act of 1964. Tenant hereby agrees and covenants that it will not discriminate nor permit discrimination in its use of the Demised Premises or its rights and privileges granted under this Lease against any

person(s) or party(ies) because of race, color, religion, sex, or national origin; and that it will comply with the non-discrimination requirements of the Code of Federal Regulations, Title 49, Part 21, Appendix C(b)(3), effectuation of Title VI of the Civil Rights Act of 1964 and all amendments and revisions thereto.

36. **HAZARDOUS WASTE INDEMNIFICATION:** Tenant will indemnify, save harmless, and defend Landlord from any claim or claims arising from the discovery, uncovering, finding, transportation, storage, and disposal of any oil, hazardous material, hazardous waste or hazardous substance, as those terms are defined by any applicable law, rule or regulation, including, without limitation, the Rhode Island Hazardous Waste Management Corporation Act, R.I.G.L. 23-19-1 et seq., the Rhode Island Hazardous Substance Act, R.I.G.L. 23-24-1 et seq., the Rhode Island Rules and Regulations for Hazardous Waste Generation, Transportation, Treatment, Storage and Disposal, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42-U.S.C. 9601 et seq., and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., solely on, beneath, above, and under the Demised Premises as described in Exhibit A, attributable to Tenant subsequent to the date of this Lease arising under Rhode Island General Laws, Sections 23-19-1 through 23-19-27, inclusive, as amended or otherwise. In the event that any Hazardous Material is evidenced during construction, Tenant will be responsible to dispose of said Hazardous Materials in the proper manner in accordance with all applicable laws and ordinances regarding any land that is disturbed solely within the Demised Premises as described in Exhibit A and any easements that Landlord shall grant Tenant to effectuate the Lease and restricted to a depth of Fifteen (15) feet. Should pre-construction testing reveal Hazardous Material, Tenant reserves the right to relocate to a more suitable location on land owned and controlled by Landlord disposing of said Hazardous Material in the proper manner in accordance with all applicable laws and ordinances regarding any land that has been disturbed solely by such testing.

37. **PURCHASE OPTION:** Tenant hereby agrees that Landlord will have the right to purchase the Monopole or Lattice Tower at any time during the Initial Term or Renewal Term of this Lease for the nominal payment of Ten Dollars (\$10.00). As a condition to the exercise of such option, the

Landlord and Tenant will enter into a new agreement mutually acceptable to the parties reflecting such changes to this Lease necessary as a result of such transfer.

38. **COUNTERPARTS:** This Lease may be executed in one or more counterparts, each of which will be deemed original.
39. **RELOCATION:** The Tenant hereby agrees and covenants that it will hold the Landlord harmless from all cost, suits, claims, and liability which may arise from the Tenant's relocation, removal, or realignment of the Radio Link and appurtenances empowered under Title 24, Chapter 8.1, Section 24-8.1-1, and Section 24-8.1-2 of the General Laws of the State of Rhode Island and this Lease, including without limitation thereto, any such relocation, removal, or realignment compelled or necessitated by the Landlord due to any transportation or public purpose.

IN WITNESS WHEREOF, the parties have executed, or have caused their properly authorized representatives to duly execute, this Lease, under seal, on the date and year first above written.

**LANDLORD:**

WITNESS/ATTEST:

STATE OF RHODE ISLAND  
AND PROVIDENCE PLANTATIONS/  
DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
\_\_\_\_\_  
B y :  
Leonard F. Clingham, Esq.  
Deputy Director

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

In Providence on this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 1997 before me personally appeared Leonard F. Clingham, to me known and known by me to be the Deputy Director of the Rhode Island Department of Transportation and the party for and on behalf of the State of Rhode Island and Providence Plantations who executed the foregoing instrument and he acknowledged said instrument by him so executed to be his free act and deed individually and in his said capacity and the free act and deed of the State of Rhode Island and Providence Plantations.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

**TENANT:**

OMNIPOINT COMMUNICATIONS  
ENTERPRISES, INC.

WITNESS/ATTEST:

\_\_\_\_\_  
\_\_\_\_\_  
B y :  
Anne Patrick  
Technical Director, OCEI

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

In Providence on this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 1997, before me personally appeared Anne Patrick, Technical Director, OCEI, to me known and known by me to be the party executing the foregoing instrument for and on behalf of Omnipoint Communications Enterprises, Inc. and she acknowledged said instrument by her so executed to be her free act and deed individually and in her said capacity and the free act and deed of Omnipoint Communications Enterprises, Inc.

\_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_

**STATE PROPERTIES COMMITTEE:**

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 1997 by the State Properties Committee.

APPROVED AS TO TERMS  
AND CONDITIONS:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Chairman

By: \_\_\_\_\_  
Attorney General

APPROVED AS TO SUBSTANCE:

APPROVED:

By: \_\_\_\_\_  
Director of Administration

By: \_\_\_\_\_  
Public Member

**EXHIBIT C**  
**Memorandum/Notice of Lease**

Site Name: \_\_\_\_\_ Site ID: \_\_\_\_\_

This Memorandum/Notice of Lease evidences that a lease dated \_\_\_\_\_ was made and entered into by and written between \_\_\_\_\_, (“Owner”), whose address is \_\_\_\_\_ and Omnipoint Communications Enterprises, Inc., a Delaware Corporation ("OCEI"), whose address is 50 Vision Boulevard, East Providence, RI 02914 the terms and conditions of which are incorporated herein by reference.

Such Lease provides in part that Owner leases to OCEI a certain site located at \_\_\_\_\_, City/Town of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, within the property of Owner which is described in Exhibit "A" attached hereto, with grant of easement for rights of access thereto and to electric and telephone facilities pursuant to said Lease commencing on \_\_\_\_\_, 19\_\_\_\_, and ending on the \_\_\_\_\_ anniversary of the Rent Start Date, which term is subject to three (3) extension periods totaling eighteen (18) years by OCEI.

Following the cancellation, termination or expiration of the Lease, upon request OCEI will make, execute and deliver to Owner an instrument, in form and substance reasonably satisfactory to Owner, in recordable form, releasing this Memorandum/Notice of Lease.

IN WITNESS WHEREOF, the parties have executed the Memorandum/Notice of Lease as of the day and year first above written.

Signed, sealed and delivered in the presence of:	OWNER: _____
_____	By: _____
Printed Name: _____	Printed Name: _____
_____	Title: _____
Printed Name: _____	Date: _____
	Address: _____

STATE OF RHODE ISLAND  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1997, by \_\_\_\_\_, or by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation or by \_\_\_\_\_, partner (or agent) on behalf of \_\_\_\_\_, a partnership. He/she is personally known to me or provided \_\_\_\_\_ as identification and he/she did/did not take an oath.

\_\_\_\_\_  
(Official Notary Signature)  
Notary Public, State of: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

(AFFIX NOTARIAL SEAL)

Signed, sealed and delivered  
in the presence of :

Omnipoint Communications Enterprises, Inc.,  
a Delaware Corporation

\_\_\_\_\_  
Witness:

Printed Name:\_\_\_\_\_

\_\_\_\_\_  
Witness:

Printed Name:\_\_\_\_\_

By:\_\_\_\_\_

Printed Name:  \_\_\_\_\_ ANNE PATRICK \_\_\_\_\_

Title:  \_\_\_\_\_ TECHNICAL DIRECTOR \_\_\_\_\_

Date:\_\_\_\_\_

Address:  \_\_\_\_\_ 50 Vision Boulevard \_\_\_\_\_

                                  \_\_\_\_\_ East Providence, RI 02914 \_\_\_\_\_

STATE OF RHODE ISLAND

COUNTY OF PROVIDENCE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1997 by ANNE PATRICK, as TECHNICALDIRECTOR of OMNIPOINT COMMUNICATIONS, ENTERPRISES, INC. a Delaware corporation, on behalf of the corporation.

\_\_\_\_\_  
(Official Notary Signature)  
Notary Public, State of \_\_\_\_\_

My Commission expires:\_\_\_\_\_

(AFFIX NOTARIAL SEAL)